

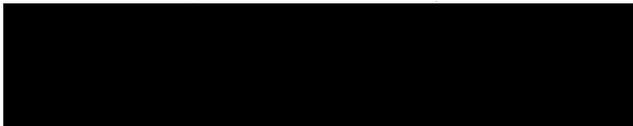
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U.S. Citizenship
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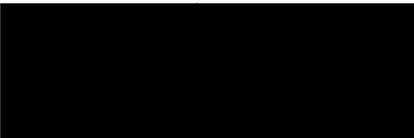
JAN 26 2005

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:
WAC 03 249 54639

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a youth minister. The director determined that the petitioner had not established that the position of youth minister is a qualifying religious occupation.

In a request for evidence prior to the denial, the director instructed the petitioner to provide information "from an authorized official of the religious organization" to indicate that the position offered to the beneficiary qualifies as a religious occupation, i.e., that it relates to a traditional religious function as required by 8 C.F.R. § 204.5(m)(2). The petitioner responded with a letter from an official of the petitioning church. In denying the petition, the director stated that the letter is not sufficient because its author is not "a Superior or Principal of the denomination in the United States." The director took this language from *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

On appeal, counsel correctly observes that the request for evidence did not indicate that the letter had to come from "a Superior or Principal of the denomination in the United States," and therefore the petitioner should not be faulted for failing to follow instructions that the director never issued. The petitioner also submits, on appeal, a letter from a local denominational official (the director of Missions for the Orange County Southern Baptist Association). Counsel also asserts that *Varughese* recommends, but does not require, a letter from "a Superior or Principal of the denomination in the United States."

Without addressing the merits of counsel's interpretation of *Varughese*, the AAO finds that the director's citation of *Varughese* appears to have been significantly removed from its original context. In that case, decided before special immigrant religious worker benefits were available to non-ministers, the issue to be decided by the "Superior or Principal of the denomination" concerned the credentials of an alien purporting to be a minister. Because the alien had been unable to produce proof of ordination, the Board of Immigration Appeals determined that a denominational official in the United States would need to verify the alien's credentials. We do not find that these circumstances closely mirror the proceeding at hand, and therefore the director's reliance on *Varughese* appears to be misplaced.

That being said, if a local church seeks to demonstrate that a given occupation relates to a traditional religious function within its denomination, it stands to reason that confirmation of that claim must come from a source with authority to speak on behalf of the denomination. The petitioner, on appeal, has submitted a letter that appears to meet this standard. The petitioner has thus overcome the only stated ground for denial.

Review of the record, however, raises another issue that must be addressed before the petition can be approved. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on September 4, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a youth minister throughout the two years immediately prior to that date.

The petitioner's pastor, [REDACTED] initially claimed that the beneficiary "has been an employee of our Church since July 16, 2001," several weeks before the qualifying period commenced in early September 2001. Subsequently, that same individual has claimed "[f]rom January 2001 to September 2001, the beneficiary has volunteered at our church. From September 2001 to the present, he is employed as Youth Minister." These two claims are not entirely consistent with one another.

The petitioner has submitted copies of paychecks and Form W-2 Wage and Tax Statements, reflecting past payments to the beneficiary. The earliest paycheck is dated November 1, 2001, with the annotation "Oct. 2001 salary." The record also contains checks for "Nov. 2001 salary" and "Dec. 2001 salary." Each of the three checks is for exactly \$1,000. The beneficiary's Form W-2 for 2001 reflects exactly \$3,000 in wages, which matches the three \$1,000 checks. These two converging lines of evidence indicate that the beneficiary's paid employment began in October 2001, not September 2001 as claimed. Because payroll and tax records do not show that the beneficiary was working for the petitioning church in September 2001, the petitioner must provide some other means of demonstrating that the beneficiary worked during that first month of the qualifying period.

We further note that the beneficiary's 2001 Form W-2 shows \$253.80 in taxes withheld from the beneficiary's gross pay. The checks issued to the beneficiary, however, are for the full \$1,000 each, and thus the checks do not reflect this withholding. This is another discrepancy that warrants attention, particularly in light of the petitioner's inconsistent statements regarding when the beneficiary began working for the church. If the purported payroll records do not accurately reflect actual payments to the beneficiary, then the credibility of the entire record is in doubt.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.